

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

FILED
MAY 31 2001
U. S. DISTRICT COURT
CLERK'S OFFICE
BY DEPUTY

NAEEM M. ABDURRAHMAN,

Plaintiff,

v.

Civil Action No. A-00-CA-813 JN

THE UNIVERSITY OF TEXAS, DALE E.
KLEIN, LARRY R. FAULKNER,
SHELDON EKLAND-OLSON, BEN G.
STREETMAN, NEAL E. ARMSTRONG,
SHELDON LANDSBERGER and
J. PARKER LAMB,

Defendants.

PLAINTIFF ABDURRAHMAN'S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION FOR RECONSIDERATION
OF DISMISSAL OF CLAIMS

Naeem M. Abdurrahman, plaintiff, supplements his motion for reconsideration.


The unopposed motion for reconsideration was based on plaintiff's assertion that the motion was not served and that consequently the court should reconsider its order granting the motion for failure to make timely response.

Attached hereto is a copy of the motion received by plaintiff's counsel on May 29, 2001, with the certificate of service showing the date of service as May 24, instead of May 4, the date the motion was filed. Also attached is a true copy of the envelope in which the motion was served by certified mail, as the certificate of service states, showing that the motion was mailed on May 24, 2001. Even though defendants did not oppose the motion for reconsideration, plaintiff considers it appropriate

to fully inform the court, as the service of the motion confirms the plaintiff's assertion that the motion was not received in accordance with the certificate of service on the motion filed with the court.

Upon this additional evidence, the court should grant plenary reconsideration of the motion, and for the reasons set forth in the plaintiff's motion to reconsider, the motion should be granted only in part, to the extent it is not opposed by the plaintiff.

Respectfully submitted,



David T. López
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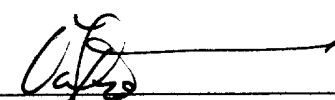
OF COUNSEL:

DAVID T. LOPEZ & ASSOC.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing submission was served on this 30th day of May, 2001, on the attorney-in-charge for the respondent party or parties by telecopier transmission and/or by placing it in the United States Mail, postage prepaid, addressed to the last known address of each as follows:

Maureen McCarthy Franz, Esq.
Assistant Attorney General
Office of the Texas Attorney General
P. O. Box 12548
Austin, TX 78711-2548



David T. López

FILED

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MAY 04 2001

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

CIVIL ACTION NO. A 00 CA 813 JN

CONFIDENTIAL
FOR YOUR INFORMATION

Halderman, 465 U.S. 88, 194 S.Ct. 900 (1990); Chacko v. Texas A&M University, 960 F. Supp. 1180, 1198 (S.D. Tex. 1997). Absent consent of the State of Texas for suit to be brought against the State or one of its agencies or departments, such as the University of Texas, it is proscribed by the State's sovereign immunity under the Eleventh Amendment. Tex. Educ. Code Ann. §65.02(a)(2) (Vernon 1994); Pennhurst, 465 U.S. at 100, 104 S.Ct. at 908; Chacko, 960 F. Supp. at 1198. .

3. The individual Defendants sued in their official capacities for claims under 42 U.S.C. §§1981 and 1983 are similarly protected by the Eleventh Amendment as to any monetary damages. Hafer v. Merlo, 502 U.S. 21, 24, 112 S.Ct. 358, 361, 116 L.Ed.2d 301 (1991); Chacko, 960 F. Supp. 1198 -1199.

4. In addition, States and agencies of the State, such as the University of Texas, are not "persons" who may be sued under 42 U.S.C §1983. Cheramie v. Tucker, 493 F.2d 586 (5th Cir. 1974), cert. den. 419 U.S. 868, 95 S.Ct. 126, 42 L.Ed.2d 107.

5. Plaintiff also alleges in Paragraphs 4.16, 4.36, and 5.3 of his Original Complaint that Defendants violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d by discriminating against him on the basis of race, Defendant University of Texas (Austin) being involved in a federally sponsored and funded program in which Plaintiff participated.

6. Plaintiff is precluded from pursuing a claim under Title VI for racial discrimination in employment. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, is the exclusive remedy for such employment discrimination. Lakoski v. James, 66 F.3d 751, 753-754 (5th Cir. 1995). Allowing an employment discrimination claim under Title VI would disrupt the remedial process crafted by Congress in Title VII. Lowrey v. Texas A&M University System,

117 F.3d 242, 254 (5th Cir. 1997).

WHEREFORE, Defendants pray this Court grant their Motion to Dismiss and award such other and further relief as the Court deems fair and just.

Respectfully submitted,

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

JEFFREY S. BOYD
Deputy Attorney General for Litigation

TONI HUNTER
Chief, General Litigation Division

A handwritten signature in black ink, appearing to read 'Maureen McCarthy Franz', is written over a horizontal line.


MAUREEN MCCARTHY FRANZ
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent via certified mail, return receipt requested on May 4, 2001 to:

David T. Lopez
David T. Lopez & Assoc.
3900 Montrose Boulevard
Houston, Texas 77006-4959

24


MAUREEN MCCARTHY FRANZ
Assistant Attorney General

ABDURRAHMAN/MOTION TO DISMISS



OFFICE OF THE ATTORNEY GENERAL - STATE OF T
JOHN CORNYN
PO Box 12548
AUSTIN TX 78711-2548

Return Service Requested

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CERTIFIED MAIL

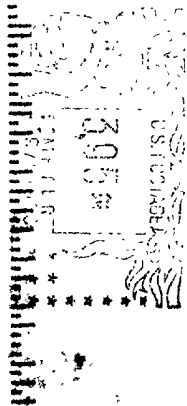


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received
on 5.29.01